

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-0378-AIR-E **TCEQ ID:** RN105093991 **CASE NO.:** 35486**RESPONDENT NAME:** Tony Rhett Dickey

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Dickey Burn Site, 1174 Pioneer Road, Rhome, Wise County</p> <p>TYPE OF OPERATION: Private residence</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on October 2, 2007, alleging unauthorized outdoor burning. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Tony Rhett Dickey, Owner, 1174 Pioneer Road, Rhome, Texas 76078 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: October 2, 2007</p> <p>Date of Investigation Relating to this Case: October 18, 2007</p> <p>Date of NOE Relating to this Case: February 26, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failure to comply with the general prohibition related to outdoor burning. Specifically, unauthorized outdoor burning of demolition debris, including frame material, insulation, and other garbage was documented [30 TEX. ADMIN.CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,482</p> <p>Total Deferred: \$296 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,186</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent ceased all unauthorized outdoor burning at the Site and removed and properly disposed all remaining debris on March 3, 2008.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	3-Mar-2008	Screening	3-Mar-2008	EPA Due	
	PCW	4-Mar-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Tony Rhett Dickey
Reg. Ent. Ref. No.	RN105093991
Facility/Site Region	4-Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35486	No. of Violations	1
Docket No.	2008-0378-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Jorge Ibarra, P.E.,
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement **Subtotals 2, 3, & 7** \$50

Notes The Respondent was issued one NOV with the same/similar type of violations.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction **Subtotal 5** \$100

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent achieved full compliance on March 3, 2008.

0% Enhancement* **Subtotal 6** \$0

Total EB Amounts	\$532
Approx. Cost of Compliance	\$500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$950

OTHER FACTORS AS JUSTICE MAY REQUIRE 56% **Adjustment** \$532

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Upward adjustment to capture the avoided cost associated with this violation.

Final Penalty Amount \$1,482

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$1,482

DEFERRAL 20% Reduction **Adjustment** -\$296

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$1,186

Screening Date 3-Mar-2008

Docket No. 2008-0378-AIR-E

PCW

Respondent Tony Rhett Dickey

Policy Revision 2 (September 2002)

Case ID No. 35486

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105093991

Media [Statute] Air

Enf. Coordinator Jorge Ibarra, P.E.,

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent was issued one NOV with the same/similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 3-Mar-2008 Respondent Tony Rhett Dickey Case ID No. 35486 Reg. Ent. Reference No. RN105093991 Media [Statute] Air Enf. Coordinator Jorge Ibarra, P.E., Violation Number 1 Rule Cite(s) 30 Tex. Admin.Code § 111.201 and Tex. Health & Safety Code § 382.085(b) Violation Description Failed to comply with the general prohibition related to outdoor burning. Specifically, unauthorized outdoor burning of demolition debris, including frame material, insulation, and other garbage was documented during an investigation on October 18, 2007.	Docket No. 2008-0378-AIR-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision January 29, 2008</i>
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Base Penalty	\$10,000
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>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Percent

Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.
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Adjustment	\$9,000
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	\$1,000
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Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="1"/>	Number of violation days
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<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="text" value="x"/>	

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$532"/>	Violation Final Penalty Total <input type="text" value="\$1,482"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,482"/>	

Economic Benefit Worksheet

Respondent Tony Rhett Dickey
Case ID No. 35486
Reg. Ent. Reference No. RN105093991
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$500	18-Oct-2007	3-Mar-2008	1.3	\$32	\$500	\$532

Notes for AVOIDED costs

Estimated cost to properly dispose demolition debris. Date Required is the investigation date, Final Date is the compliance date.

Approx. Cost of Compliance

\$500

TOTAL

\$532

Compliance History

Customer/Respondent/Owner-Operator:	CN603114562	DICKEY, TONY RHETT	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN105093991	DICKEY BURN SITE	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):				
Location:	1174 PIONEER RD, RHOME, TX, 76078		Rating Date: September 01 07	Repeat Violator:
			NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	March 03, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 03, 2003 to March 03, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/19/2007 (542385)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 12/28/2006 (534954)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Unauthorized outdoor burning
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TONY RHETT DICKEY
RN105093991

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0378-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Tony Rhett Dickey ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns a private residence at 1174 Pioneer Road in Rhome, Wise County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Four Hundred Eighty-Two Dollars (\$1,482) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Eighty-Six Dollars (\$1,186) of the administrative penalty and Two Hundred Ninety-Six Dollars (\$296) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this

Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent ceased all unauthorized outdoor burning at the Site and removed and properly disposed of all remaining debris on March 3, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Site, the Respondent is alleged to have failed to comply with the general prohibition related to outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 18, 2007. Specifically, unauthorized outdoor burning of demolition debris, including frame material, insulation, and other garbage was documented.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Tony Rhett Dickey, Docket No. 2008-0378-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sallie
For the Executive Director

6/30/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Tony Dickey
Signature

4-21-2008
Date

Tony M. Dickey
Name (Printed or typed)
Authorized Representative of
Tony Rhett Dickey

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

